RECENT CASES.

Carriers—Termination of Carriage—Character of Liability.—Norton et al. v. *The Richard Winslow*, 67 Fed. Rep. 259 (Wis.). A quantity of grain was shipped from Chicago to Buffalo, at the close of the season, and the freight charges included storage in the vessel for the Winter. This was a custom in the ports of the Great Lakes, and saved the shipper elevator charges, besides securing the shipowner a cargo. The grain was damaged during the period of storage, in the Winter, and the evidence went to show that by the exercise of certain precautions the injury might have been avoided. The owner of the vessel was held liable only as a warehouseman, the court expressing its unwillingness to apply a different rule than the ordinary one of carrier's liability, in spite of the special contract.

Carriers—Negligence of Fellow Passengers.—Gulf, C. & S. F. Ry. Co. v. *Shields*, 29 S. W. Rep. 652 (Texas). A passenger, slightly intoxicated, enters the smoking car of a railroad train and places his baggage, which is in the form of an old tow sack filled with coffee grinders, scrap iron and a jug of alcohol, on the seat beside him, projecting slightly into the aisle. The motion of the train causes the sack to tumble out into the aisle of the car, breaking the jug and spilling the alcohol on the floor. As this flows along the aisle, another passenger, who is just lighting a cigar, throws a match in the way and the alcohol burns up to the ceiling of the car; a third passenger, with silk stockings and celluloid cuffs, has his feet, hand and eyebrows seriously scorched and sues the railroad company for damages. Held, that the contents of the sack being unknown to the conductor and the passenger's conduct not sufficiently boisterous to warrant his ejectment, it was not *actionable* negligence unless it was a proximate cause of the injury.

City Ordinance—Regulation of Pawnbrokers—Constitutional Law.—City of St. Joseph v. *Levin*, 31 S. W. Rep. 101 (Mo.). A city ordinance requiring pawnbrokers to keep a description of all property left with them, and of the persons leaving it, and show this to the police upon demand, is a proper police regulation. It does not conflict with Article II. Section 2, of the Constitution, which provides that the people shall be secure in their homes from unreasonable search at the hands of public officers.

Constitutional Law—Plea on Trial for Murder.—Genz & State, 31 Atl. Rep. 1037 (N. J.). A legislative act providing that pleas of guilty to an indictment for murder shall be disregarded, and a plea of not guilty substituted, and the case tried by jury, is constitutional. The defendant has not an inalienable right to plead guilty, as such a provision as this does not prejudice him and the common law procedure is subject to legislative control.

Contracts—Proof of Terms.—Sherwood v. *William H. Crane*, 33 N. Y. Sup. 16. The plaintiff claimed damages for breach of contract of employment by the defendant, a theatrical manager, under which she was to perform at the Star Theater (at a salary of sixty dollars per week), in a play called "Brother Jonathan," the performances of which were to commence in the latter part of February, 1893, and to run until June 1st. The defense was that she was not employed for any particular period, and that her employment was conditional upon her rehearsal of the part to the satisfaction of the author of the play and of the defendant. When the question in point is whether the employment of plaintiff as an actress was for the run of a particular play, or was for an entire season, evidence that the agent who engaged plaintiff engaged her for a particular play, stating: "This means a permanent thing for you in New York, from the opening until the balance of the season," and assured her that the play would not be a failure, and then stated the length of the season, is sufficient to sustain finding that employment was for the season.

Criminal Law—Disturbing Public Worship.—Winnard v. *State*, 30 S. W. Rep. 555 (Texas). A man furnished some boys with the means of disturbing public worship in a church, and then absented himself, before the disturbance took place. It was held that he was a principal in the offense, although he had cautioned the boys to wait till after the services were over.

Damages—When Not Excessive.—Erickson v. *Brooklyn Heights Ry. Co.*, 32 N. Y. Supp. 915. The plaintiff, a healthy and robust married woman, suffered injuries on a street railway which resulted in the impairment of her hearing, the loss of a leg, and the disabling of a right arm. Held, that a verdict of $23,000 was not excessive, and that such a sum would not more than compensate her for the change in her condition.

Duress—Mortgage of Wife's Land.—Russell v. *Durham et al.*, 29 S. W. Rep. 635 (Ky.). It is not held to be duress when a wife is induced by the importunities of her husband and the threats of

criminal prosecution by his sureties to execute a mortgage on her own property, and a foreclosure sale of such property under an execution will not be set aside on that ground. It is but natural that she would sacrifice anything to save her husband from danger of imprisonment and disgrace, and this outweighs the fact that she is so unfortunate as to lose her property thus.

Exemption from Taxation—Railroad Property.—State v. *Mayor of Jersey City et al.*, 31 Atl. Rep. 1020 (N. J.). The commissioners of adjustment of Jersey City imposed a local tax on certain railroad property which had been exempted from general taxation by a legislative act so long as it was occupied for railroad and shipping purposes. It was decided that the State had accepted the payment of a full consideration from its grantee when the land was originally conveyed to the railroad companies, and neither it nor its political subdivisions could repudiate any of the terms of the contract which inured to the benefit of the latter. The burden of proof rested upon the city authorities to show that the land had been used for other than the specified purposes.

Fair Grounds—Leasing for Gambling Purposes.—State v. *Darroch*, 40 N. E. Rep. 639 (Ind.). The appellee was charged with violating section 2174, Rev. Statutes, forbidding the officers and managers of agricultural societies from renting, leasing, or donating their grounds to be used for gambling purposes. The court held that the appellee, acting as a director of such a society and unlawfully renting a portion of the grounds for the purpose of carrying on a game of chance with dice, was liable for a violation of this statute.

Homestead—Intention—Evidence.—Gallagher et al. v. *Keller*, 29 S. W. Rep. 647 (Ind.). Appellant bought a lot and made some improvements on it, but did not begin to build a house on it until after the lot had been sold under execution for a judgment rendered against the owner in favor of the appellee. The facts that he built the house and moved into it after the lot was sold under execution must be accepted as evidence tending to establish appellant's intention of making the lot his homestead at the time of its purchase, and of the continuation of such intentions from the time he purchased it until he actually occupied it as his home.

Injury from Defective Street—Liability of City.—Yeager v. *City of Bluefield*, 21 S. E. Rep. 752 (W. Va.). A city does not insure

against accidents on its streets, and if they are in a reasonably safe condition for ordinary travel, is not liable for injuries to foot passengers.

Life Insurance—False Statement—Effect on Policy.—Bridge v. *National Life Assn.*, 33 N. Y. Supp. 553. A false statement by an insured person, made under a mistake as to his legal obligations, does not avoid a policy regularly in force at the time the statement was made.

Mortgage—Effect of Tender—Lien.—Parker v. *Beasley*, 21 S. E. Rep. 955 (N. C.). One whose land was advertised for sale under a mortgage made a legal tender of the amount due, with interest and costs, to the creditor's attorney. The latter refused to accept it, unless his fees were also paid, and as this was not done, sold the land. Held, that a tender after maturity stops interest from the time of the tender, but does not discharge the mortgage lien, and the judgment becomes a lien upon the land.

Mortgage—Penal Provision.—Kreetz v. *Robbins*, 40 Pac. Rep. 415 (Wash.). A provision in a note payable after five years, with interest at 7 per cent. per annum, that on failure to pay interest when due it shall be increased to 12 per cent. per annum, and be computed on the principal from the date of the note, is a penalty, and courts of equity will not enforce it.

Receivers—Selection—Officer of Corporation.—Olmstead v. *Distilling and Cattle Feeding Co.*, 67 Fed. Rep. 24. The Distilling and Cattle Feeding Co. became insolvent, and receivers were appointed upon application, one of whom was the president of the company. The latter had speculated in the company's stock, and was at the time of the appointment short a number of shares on the New York Stock Exchange. This petition was brought by other stockholders to substitute another receiver in his place, and was granted by the court, which said that while an officer of a corporation was not ineligible for such an appointment, he must be a strictly disinterested party. In this case the president's interests as an officer were directly opposed to his private interests, and under such circumstances the acceptance of a receivership was held an imposition on the stockholders.

Religious Societies—Review by Civil Courts.—Pounder v. *Ash*, 63 N. W. Rep. 48 (Neb.). The civil courts have no jurisdiction in purely ecclesiastical matters, and will not review the proceedings

of a church tribunal in a case relating solely to church discipline. A judgment of the highest tribunal of a religious denomination, deposing a clergyman from the ministry, will be recognized, and enforced by an injunction forbidding him to act further in that capacity in his former parish.

Review of Appeal—Admission.—Alderman v. *Savage*, 40 N. E. Rep. 639 (Ind.). Appellant entered into an agreement with appellee, in which the latter undertook to insert a certain advertisement in thirteen continuous editions of a weekly newspaper. In a suit for the contract price, the admission of appellant that the "ad" was printed in each of the papers for thirteen successive weeks, although he denied that it was inserted in *all* the issues of each paper, was held sufficient to warrant a verdict for appellee.

Shipping—Bill of Lading—Excepted Perils.—Brauer v. *Campania Navigacion La Flecha*, 66 Fed. Rep. 776. A bill of lading exempted a carrier by sea from liability for accidents to cargo occasioned by the negligence or error of judgment of the shipmaster. Held, that this did not relieve him from liability for cargo thrown overboard during a severe storm, when it appeared that the sacrifice was not necessary to the preservation of other property or the ultimate safety of the ship.

Statute of Frauds—Sale of Goods—Receipt.—Moore v. *Hays*, 40 N. E. Rep. 638 (Ind.). Appellant sells corn to C on an oral contract and at the same time orders him to take it away. C directs appellee to remove the corn from appellant's pen and in turn is sued for its value. Mere words would not constitute a delivery, but here there was actual receipt of the goods by the purchaser, or by another under his direction, which amounts to the same thing, and the agent of the purchaser is not liable to the seller for the value of the corn, his receipt of the goods having the effect of taking the contract of sale out of the statute of frauds.

Tenancy from Year to Year—How Created—Tenant Holding Over. —Kleespies v. *McKenzie*, 40 N. E. Rep. 648 (Ind.). Where a tenant under a lease for years holds over, and the landlord thereafter accepts or demands rent, a tenancy from year to year is created, which may be terminated by ten day's written notice to quit, in case of default in payment of rent. It is on the same footing with tenancies established by the occupancy of the tenant

on the one hand, and the consent of the landlord on the other, without any express agreement as to duration.

Trial—Instructions—Construction of Charge as a Whole.—Butler et al. v. *Machen*, 65 Fed. Rep. 901. In this case the presiding judge, in charging the jury, gave strictly correct instructions as to the rule of preponderance of evidence, but in attempting to make that rule more intelligible to the jury, some of the disconnected sentences of the charge, if taken alone, would seem to indicate that they might substitute their own opinion for the evidence produced at the trial. Held, that there was no error if these sentences, when read with the remainder of the charge, would bear no such meaning.

Trusts—Accounting by Trustee—Interlocutory Judgment.—Rogers et al. v. *New York & T. Land Co. Limited et al.*, 33 N. Y. Sup. 840. The court has the power to reserve the question as to whether certain expenses which are claimed as a charge shall be allowed or not, until the referee's report comes in, and the court be fully informed in regard to all the facts and circumstances of such accounts. An interlocutory judgment in an action against trustees, which provides for this, is sufficient in form, though it does not decide whether or not any of the expenses should be allowed.

Wills—Construction—Description of Legatees.—In re Benson's Estate. Appeal of Davies *et al.*, 32 Atl. Rep. 654. The only difficulty in this case is to determine what the testator meant by the expression "my nephews who may read law," and whether the court below was right in holding that one who reads law books "casually, for amusement or in a desultory manner," as the testimony tends to show of the nephew in question, was not entitled to a distributive share of the testator's law library. Held, that this was a bequest to such of testator's nephews as had taken up the study of law with the purpose of being admitted to the bar and practicing the profession, or as had already been admitted and were practicing; but did not include one who, though registered as a student, and having read law for a year, had abandoned all intention of being admitted.